



May 23, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written *Ex Parte* Communication in CS Docket No. 98-120

Dear Ms. Dortch:

The National Association of Broadcasters (“NAB”) hereby responds to *ex parte* notices discussing potential voluntary commitments by certain cable operators in the pending viewability proceeding. As discussed further below, NAB continues to support an extension of the current viewability rule. We do not believe that the statements of the cable operators alone address the requirement of the statute. However, NAB would not oppose providing cable operators with some additional flexibility. NAB believes that, with some modifications, the voluntary commitments discussed by cable operators could form the basis for another option for compliance with the statutory viewability mandate.

Time Warner Cable Inc. (“TWC”) filed a notice of a meeting at which it discussed tentative plans for delivering must carry signals in the event the viewability rule sunsets.¹ TWC described equipment offers made in connection with its transition of an Augusta, Maine cable system to “all digital.” During that transition, rather than requiring its subscribers to lease full-featured set-top boxes or purchase CableCARD-equipped retail devices, TWC gave consumers the use of one or more limited functionality digital transport adapters (“DTAs”) at no charge for two years, after which the DTAs could be leased for \$0.99 per month.² TWC stated that it plans to make comparable equipment offers to subscribers in connection with dropping analog versions of must carry signals on hybrid systems if the viewability rule sunsets.³

¹ Letter to Marlene H. Dortch, FCC Secretary, from Matthew A. Brill, Counsel for Time Warner Cable Inc., filed in CS Docket No. 98-120 (May 7, 2012).

² *Id.* at 1.

³ *Id.* at 1-2.

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The National Cable & Telecommunications Association (“NCTA”) also filed an ex parte letter discussing voluntary measures that certain cable operators would undertake in the event that the Commission’s viewability rule is allowed to sunset.⁴ NCTA states that if the current rule sunsets, the “eight largest incumbent cable operators”⁵ commit to taking the following steps with regard to any hybrid systems on which they cease carriage of the analog version of a must carry station’s signal:

- (i) the operators will “make available to analog-only households, upon request, low-cost set-top devices capable of displaying basic service tier signals on analog television sets;”⁶ and
- (ii) the operators will provide notice of set-top box offers to affected subscribers (i.e., at least 30 days prior to cessation of analog carriage of any must carry signal).⁷

Throughout this proceeding, NAB has urged the Commission to retain the consumer-oriented focus that has defined its implementation of the statutory viewability requirement. To that end, NAB has urged and continues to urge the Commission to extend its current rule for allowing cable operators to meet the viewability requirement in the statute. Under the current rule, hybrid cable systems can go “all-digital” or they can provide analog access to their subscribers. Eliminating the current rule and relying solely upon voluntary commitments by some cable operators to some analog cable customers would not satisfy the statutory viewability requirement.

Should the Commission wish to give cable operators an additional compliance option, NAB believes that a modified rule based on the voluntary commitments identified in the record could ensure consumer access to must carry broadcast signals as required by the statute. For example, the Commission could specify that, to comply with the statutory viewability requirement, a cable operator must: (i) go all-digital; (ii) comply with the current viewability rule; or (iii) provide *free* equipment that enables access to

⁴ Letter to Marlene H. Dortch, FCC Secretary, from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, filed in CS Docket No. 98-120 (May 17, 2012) at 2.

⁵ NCTA does not identify these operators, but states that they collectively serve more than 70% of all analog-only cable customers.

⁶ NCTA does not discuss specifically what would constitute a “low-cost” set-top box, or for how long such boxes would be made available to subscribers.

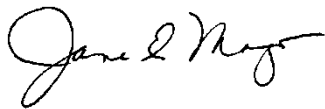
⁷ Letter to Marlene H. Dortch, FCC Secretary, from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, filed in CS Docket No. 98-120 (May 17, 2012) at 2.

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digital broadcast signals for a period of three years. Such a rule, which incorporates proposals made on the record by the cable industry, would afford operators additional flexibility without controverting the plain language or intent of Section 614(b)(7).

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jane E. Mago". The signature is fluid and cursive, with the first name "Jane" and last name "Mago" clearly distinguishable.

Jane E. Mago
Executive Vice President & General Counsel
National Association of Broadcasters

cc: Sherrese Smith, Erin McGrath, Dave Grimaldi, Holly Saurer, Matthew Berry, William Lake, Michelle Carey, Mary Beth Murphy, Steven Broeckaert, Alison Neplokh, John Gabrysch, Evan Baranoff, Austin Schlick, Susan Aaron